IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

AND
THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO : 23514 of 2004

Between:

Shaik Ghouse S/o Shaik Mohiuddin
O/o Dy. Transport Commissioner, Nizamabad

..... PETITIONER

AND

1 The Government of A.P., rep by Principal Secrtary,

Transport Roads & Buildings Department,
Secretariat, Hyderabad

2 The Transport Commissioner, A.P. Hyderabad

3 The Deputy Transport Commissioner, Nizamabad

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue Writ, order or direction more particularly one in the nature of writ of Mandamus setting aside the impugned Memo No.11550/Tr.I(1)/2001-1, dated 20.07.2001 issued by the first respondent and also the order dated 24.11.2004 passed by the A.P. Admn. Tribunal in O.A.No.1266 of 2002 as illegal, arbitrary, vindictive, violation of Articles 14, 16 and 21 of the Constitution of India.

Counsel for the Petitioner : MR.C.SRINIVASA BABA

Counsel for the Respondents : GP FOR SERVICES I

The Court made the following :

O R D E R

(Per Sri Justice J.Chelameswar)

This writ petition is filed with a prayer as follows:

> "to issue Writ, order or direction more particularly one in the nature of writ of mandamus setting aside the impugned Memo No.11550/Tr.I(1)/2001-1, dated 20.07.2001 issued by the first respondent and also the order dated 24.11.2004 passed by the A.P. Admn. Tribunal in O.A.No.1266 of 2002 as illegal, arbitrary, vindictive, violation of Articles 14, 16 and 21 of the Constitution of India…."

The respondent in the vacate stay petition is the writ petitioner. He was working as a Senior Assistant in the Office of the Deputy Transport Commissioner, Nizamabad. While so, an ACB case was registered against him. The allegation being that he demanded a bribe and received the same through a third party. We are not concerned with the merits of the ACB case. Consequent upon such registration of the case, the Principal Secretary to Government of A.P. in the Department of Transport, Roads and Buildings (Transport-I) by a Memo No.11550, dated 20.07.2001 advised the Commissioner (Transport) to keep the petitioner under suspension. As a matter of fact, the Commissioner (Transport) passed the order of suspension much later i.e. on 29.01.2002. The petitioner challenged the above

communication dated 20.07.2001 in O.A.No.1266 of 2002 on the file of the A.P. Administrative Tribunal. The prayer in the O.A. as follows:

> "It is therefore prayed that this Hon'ble Tribunal may be pleased to set aside the impugned Memo No.11550/Tr.I(i)/2001.1, dated 20.07.2001 purporting to keep the applicant under suspension is without any application of mind, illegal, arbitrary, vindictive, violation of principles of natural justice and violation of Article 14, 16 & 21 of the Constitution of India and pass such other order or further orders as this Hon'ble Tribunal deem fit and proper in the circumstances of the case".

The petitioner understood the above-mentioned memo to be an order keeping him under suspension, but as a matter of fact, it is not. Initially, the Tribunal granted an interim order suspending the above-mentioned proceedings of the Government dated 20.07.2001. However, by a final order dated 24.11.2004 the Tribunal was pleased to dismiss the O.A. and hence the present writ petition.

This Court while admitting the writ petition on 30.12.2004 passed interim order in WPMP No.30851 of 2004 directing that status-quo obtaining as on that day shall be continued, pending further orders of this Court, and hence, the present vacate petition.

When the matter is taken up, learned counsel for the petitioner and the learned Government Pleader agreed that the main writ petition itself can be disposed of at this stage.

Learned counsel for the petitioner argued that the proceedings dated 20.07.2001 emanating from the Government of A.P. to the Commissioner (Transport) is virtually a dictation by the Government to the Commissioner to keep the petitioner under suspension, and therefore, any action pursuant to such dictation is illegal.

Learned counsel relied upon a Judgment of this Court reported in ***D.RAMESH SINHA V/s. CADRE AUTHORITY FOR KEY PERSONNEL OF CO-OPERATIVE CENTRAL BANKS/APEX BANK, HYDERABAD***, wherein the Division Bench held that when the '**statutory authority**' acts at the behest of some other authority, however high he

may be, who has no statutory role to play in the matter, then such action/or any order passed by him, would be a *non est* in the eye of law. In the instant case, admittedly, under Rule 15 of the A.P. Civil Services (Classification, Control and Appeal) Rules, 1991 (for short 'the Rules), the Government of Andhra Pradesh, not only the appointing authority or any authority to which it is subordinate may also place an employee under suspension as contemplated under Rule-8 of the Rules, and therefore, it cannot be said that the Government has no statutory role to play in the matter as was pointed by the Division Bench in the above-mentioned decision. On the other hand, another Division Bench of this Court in Writ Appeal No.818 of 2005, dated 21.04.2005 held that "……mere existence of a recommendation or direction by a superior authority to an appointing authority, to place an employee under suspension, does not vitiate the matter, if the appointing authority applied his mind to the facts of the case".

The whole enquiry in this matter before the Tribunal was misdirected. There was never any examination whether the appointing authority applied its mind to the case of the petitioner as the original application came to be filed much before the decision was taken by the appointing authority. In the circumstances, the limited enquiry having regard to the prayer in the O.A. is whether the proceedings of the Government dated 20.07.2001 are illegal. As can be seen from the language of the proceedings, it was only a request from the Government to the Commissioner, for the reasons stated in the proceedings, to take appropriate action under Rule-8 of the Rules. On such a request, whether the Commissioner acted independently considering the various other issues of the matter or not was never be the subject matter of the debate in the Tribunal. In our view, the whole proceedings in the original proceedings were premature and the Tribunal should have rejected the O.A. at the threshold. Eventually, the Tribunal dismissed the O.A. but various other reasons which may or may not be relevant for the present were made, but the conclusions reached by the Tribunal in dismissing the O.A. in our view is right for the reasons mentioned above, and we do not see any reason to interfere with the conclusions reached by the Tribunal in exercise of the extraordinary jurisdiction under Article 226 of the Constitution to grant a judicial review. Merely because the reasons assigned by the Tribunal are wrong, we need not interfere in the order in exercise of the power of the judicial review, if we are convinced that the conclusions are right and can be supported by legally valid reasons. We have already given the reasons how the conclusions are right.

The Writ Petition is meritless and is therefore dismissed. No costs.

J.CHELAMESWAR,J

M.VENKATESWARA REDDY,J

29th JUNE, 2005

PGS

To

1 The Government of A.P., rep by Principal Secrtary,

Transport Roads & Buildings Department,
Secretariat, Hyderabad

2 The Transport Commissioner, A.P. Hyderabad

3 The Deputy Transport Commissioner, Nizamabad

4. The Registrar, A.P. Administrative Tribunal, Hyderabad.

5. 2 CCs to G.P. for Services-I, High Court Buildings, Hyderabad.

THE HON'BLE MR JUSTICE

J.CHELAMESWAR

AND
THE HON'BLE MR JUSTICE

M.VENKATESWARA REDDY

WRIT PETITION No.23514 OF 2004

(Per Sri Justice J.Chelameswar)

29th JUNE, 2005